IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 24 OF 1992.

The State of Maharashtra. ..Appellant.

vs.

Dinanath Rambhau Hande ..Respondents.

Shri D.P. Adsule, A.P.P. for the appellant-State.
Shri S.S. Lanke for the respondent-accused.

CORAM: V.M.KANADE,J.
DATED: 14-1-2005.

ORAL JUDGMENT:

1. The State has filed this appeal against the judgment and order passed by the Special Judge, Thane, in Special Case No. 16 of 1989. By the said judgment dated 30.4.1991, the Special Judge, acquitted the accused of the offence punishable under section 406 of the Indian Penal Code and section 7 of the Essential Commodities Act.

2. The respondent-accused was allotted a fair price shop in Sector-9 at Vashi. According to the prosecution, one Narayan Shankarpal Dube, who was a card holder had a grievance against the accused that the accused did not properly distribute scheduled commodities to him. He accordingly kept a watch on the activities in the said shop and on 27.12.1988 he

noticed that one tempo was parked in the back side of the shop and grain bags were loaded in the said tempo. He, therefore, reported the matter to Vashi Police Station. Thereafter, police officers along with the complainant seized the tempo with the grain bags which were found in the tempo and offence was registered against the accused. A charge sheet was filed against the accused and accused pleaded not guilty to the charge which was framed against the accused.

3. P.W. 4, who is a rationing inspector has stated in his evidence that both the fair price shops bearing Nos. 41/F-144 in Sector No.9 and 41/F-80 in Sector No.6 were under control of rationing officer, Vashi, and the officer had authority to transport quota of grain from one fair price shop to another. It has come in evidence that after accused was arrested and brought before the officer of Vashi Police Station, he had submitted his written explanation. In the said written explanation the accused had stated that he was transporting grain bags to the fair price shop in Sector No.6 as he had received instructions from the rationing office, Vashi. In view of the admission given by P.W.4 it cannot be said that the accused has committed offence under section 406 of the Indian Penal Code and section 7 of the Essential Commodities Act. P.W. 4 ought to have verified whether in fact, the rationing officer

had given instructions to the accused to transfer unsold quota to the fair price shop in Sector No.6. The burden of proving that no such instructions were given by the rationing officer to the accused was squarely on the prosecution. The prosecution has therefore, failed to discharge the said burden. The trial Court, in my view, has correctly appreciated the evidence and acquitted the accused.

4. Appeal is accordingly dismissed. Bail bond of the accused stands cancelled.